

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.950427117-9149-09;I.D.052799C]

RIN 0648-AH97

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback  
Conservation Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric  
Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS is extending for 1 week its existing closure of all inshore waters and  
offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation  
line bounded by 33° N. lat. and 34° N. lat. within the leatherback conservation zone, to fishing by  
shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged  
for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as  
specified in the regulations. This action is necessary to reduce mortality  
of endangered leatherback sea turtles incidentally captured in  
shrimp trawls.

DATES: This action is effective from [insert date of filing for public inspection at the Office of the  
Federal Register] through 11:59 p.m. (local time) on [insert date 14 days after date of filing for  
public inspection at the Office of the Federal Register].

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (727) 570-5312, or Barbara A. Schroeder (301) 713-1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228) 762-4591 or by fax (228) 769-8699.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the leatherback conservation zone, NMFS is required to close an area for 2 weeks all inshore and offshore waters out to 10 nm (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR part 80), when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to 50 CFR 223.206(d)(2)(iv)(A) through (C).

NMFS announced a two-week closure on May 7, 1999 (64 FR 25460, May 12, 1999), affecting the portion of the leatherback conservation zone between 32° N. lat. and 33° N. lat. The boundaries of the closure correspond to those of shrimp fishery statistical zone 32. The closure was based on high concentrations of leatherbacks off the South Carolina coast, observed during aerial surveys conducted on April 27 and May 3. During those surveys, the highest concentrations were noted in waters off the southern half of the state between Hilton Head Island, SC, and at Kiawah Island, SC. After a May 11 aerial survey reconfirmed the continued high abundance of leatherback turtles in that closed zone, NMFS extended the closure for an additional week, through May 28, 1999 (64 FR 27206, May 19, 1999). That survey also showed that the leatherbacks were continuing to move slowly northward, as expected. Concentrations of leatherbacks were noted between Murrells Inlet and Myrtle Beach.

On May 14, 1999, 10 leatherback turtles were sighted during an aerial survey over approximately 15 nm (28 km) trackline, beginning at approximately 33°23' N. lat., 079°07' W. long. (offshore Pawleys Island, SC) and ending at approximately 33°35' N. lat., 078°57' W. long. (offshore Surfside Beach, SC). A repeated survey along the same trackline documented 12 leatherbacks on May 18, 1999.

On May 21, 1999, NMFS issued a temporary rule closing inshore and offshore waters from shore out to 10 nm (18.5 km) between 33° N. lat. and 34° N. lat., unless shrimp trawlers use TEDs with escape openings modified to exclude leatherback turtles (64 FR 28761, May 27, 1999). This closed area is generally from Cape Romain, South Carolina, to Wilmington Beach, North Carolina. This closure was to expire at 11:59 a.m. June 4, 1999.

On May 26, 1999, an aerial survey conducted by the South Carolina Department of Natural Resources documented continued concentrations of leatherback sea turtles between Cape Island and Murrells Inlet. A total of 15 leatherback sea turtles were concentrated in a 44 nm (81.4 km) area. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), is closing all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 33° N. lat. and 34° N. lat., within the leatherback conservation zone to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. The boundaries of this closed zone correspond to those of shrimp fishery statistical zone 33.

This action does not affect the current closure in zone 32. High concentrations of leatherback sea turtles were not documented in the May 26 survey, and, therefore, the closure in zone 32 will expire at 11:59 p.m. on May 28, 1999.

NMFS will continue to monitor the presence of leatherback sea turtles along the Georgia and South Carolina coasts through weekly aerial surveys. Continued high abundance of leatherbacks greater than 10 turtles per 50 nm (92.6 km) of trackline will require further agency action, as per 50 CFR 223.206(d)(2)(iv)(B). If leatherback sightings fall to 5 or fewer turtles per 50 nm (92.6 km) of trackline, then the aerial

surveys of the closed area will be replicated within 24 hours, or as soon as practicable thereafter. If sighting rates of 5 or fewer leatherbacks per 50 nm (92.6 km) are reconfirmed, the AA may withdraw or modify the closure that is the subject of this rule, as per 50 CFR 223.206(d)(4)(ii). NMFS will consult with the appropriate state natural resource officials in the closed area in making a determination to withdraw or modify this closure, as per 50 CFR 223.206(d)(4)(iv). Fishermen should monitor NOAA weather radio for announcements.

The regulations at 50 CFR 223.206(d)(2)(iv) state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

The additional closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call Charles Oravetz (see FURTHER INFORMATION CONTACT) for updated area closure information.

#### Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide emergency protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zone 32. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Furthermore, notice and opportunity to comment on this action was provided through the proposed rule establishing these actions (60 FR 25663, May 12, 1995). For these reasons, good cause exists under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. As stated above, the additional closure has been announced on the NOAA weather radio, in newspapers, and other media, allowing time for the shrimp fishery to comply with this rule.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C.

553, or by any other law, the analytical requirements of 5 U.S.C. 601 et seq. are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see ADDRESSES).

Dated:

---

William W. Fox, Jr.

National Marine Fisheries Service

Acting Assistant Administrator

for Fisheries